

ORIGINAL

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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JAN 12 1995

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )

JAMES A. KAY, JR. )

Licensee of one hundred sixty  
four Part 90 licenses in the  
Los Angeles, California area )

PR DOCKET NO. 94-147  
WT DOCKET NO. 94-147

DOCKET FILE COPY ORIGINAL

To: Administrative Law Judge Richard L. Sippel

MOTION TO DISMISS

James A. Kay, Jr. (Kay), by his attorneys, hereby moves the Administrative Law Judge to Dismiss, with prejudice, the Order to Show Cause, Hearing Designation Order and Notice of Opportunity for Hearing for Forfeiture (OSC). In support of his position, Kay shows the following.

In its OSC, the Commission named the Chief, Private Radio Bureau, as a party to the proceeding, *see*, OSC at para. 13. The Commission afforded Kay a period of 30 days within which to file a Notice of Appearance, "stating that he would appear at the hearing and present evidence on the matters specified in the Order," OSC at para. 14. However, the Commission did not grant the any party other than Kay a period of 30 days within which to file an appearance. Section 1.223(e) of the Commission's Rules provides that

in order to provide himself of the opportunity to be heard, any person named as a party pursuant to paragraph (d) of this section shall, within 20 days of the mailing of the notice of his designation as a party, file with the Commission, in person or by attorney, a written appearance in triplicate, stating that he will appear at the hearing. Any person so named who fails to file this written

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statement within the time specified shall, unless good cause for such failure is shown, forfeit his hearing rights,

47 C.F.R. §1.223(e).<sup>1</sup> The Commission mailed notice to the parties on December 15, 1994. Accordingly, the 20th day was January 4, 1995. Review of the Commission's records shows that the Chief, Private Radio Bureau, failed to file a notice of appearance within the time allowed by the Commission's Rules.

On December 23, 1994, a person purporting to be the Deputy Chief, Wireless Telecommunications Bureau, released a document titled Erratum, in which the Deputy Chief purported to correct the OSC to name the Chief, Wireless Telecommunications Bureau, as party to the instant proceeding.<sup>2</sup> While the Commission had delegated some authority to the Chief of the Private Radio Bureau to make editorial corrections to actions taken by the Commission, the action taken in the above captioned matter purporting to add the Chief, Wireless Telecommunications Bureau, to the above captioned proceeding was beyond any authority ever delegated by the Commission. Section 1.221(d) of the Commission's Rules, 47 C.F.R. §1.221(d), provides that "the Commission will on its own motion name as parties to the hearing any person found to be a party in interest". The Commission has not delegated authority to any

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<sup>1</sup> Section 1.223(d) of the Commission's Rules, referred to at Rule Section 1.223(e), provides that "the Commission will on its own motion name as parties to the hearing any person found to be a party in interest," 47 C.F.R. §1.223(d).

<sup>2</sup> Separately, Kay has filed with the Commission an Application for Review of the Deputy Chief's purported action.

person, panel, board, bureau, or other organizational unit to act under Rule 1.221(d) by naming persons as parties to hearings.

Even were the Deputy Chief's action held to be lawful as an exercise of the authority delegated to him as Chief, Private Radio Bureau,<sup>3</sup> the so-called Wireless Telecommunications Bureau has never had any authority delegated to it to do anything. Section 5(c)(1) of the Communications Act of 1934, as amended provides that "when necessary to the proper functioning of the Commission and the prompt and orderly conduct of its business, the Commission may, by published rule or order, delegate any of its functions . . . , " 47 U.S.C. §155(c)(1). Review of the Federal Register and of the Commission's daily releases of actions taken discloses no instance in which the Commission has ever given public notice, as that term is defined in Rule Section 1.4, 47 C.F.R. §1.4, of any rule or order establishing a Wireless Telecommunications Bureau or delegating any authority, whatsoever, to such an administrative unit. Accordingly, there is no power vested in a Wireless Telecommunications Bureau to take any action on behalf of the Commission. The Judge may take administrative notice of the absence of any lawful delegation of authority by the Commission to a Wireless Telecommunications Bureau.

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<sup>3</sup> The person who signed the Erratum as Deputy Chief, Wireless Telecommunications Bureau, Ralph A. Haller (Haller), is the same individual who has, for many years, been the Chief, Private Radio Bureau. Haller's release of the Erratum demonstrated that he was fully and personally aware of the instant proceeding as of December 23, 1994. Accordingly, there can be no reasonable excuse for the failure of the Chief, Private Radio Bureau, to have filed a timely appearance.

Since the Chief, Private Radio Bureau, failed to enter a timely notice of appearance in compliance with the OSC, and since there is no authority vested in a Wireless Telecommunications Bureau to act on behalf of the Commission, there is no party to the instant proceeding other than Kay which has any right or authority to be heard. Because there is no party to the instant proceeding which has any right or authority to present a position adverse to Kay's position, the Judge should dismiss the instant matter, with prejudice.

By the internal Commission memorandum presented at Exhibit I hereto, W. Riley Hollingsworth (Hollingsworth), Deputy Chief, Licensing Division, Private Radio Bureau, presented to his supervisor a draft Order to Show Cause for use against Kay (the Hollingsworth Memorandum and the Hollingsworth Draft).<sup>4</sup> Comparison of the Hollingsworth Draft to the OSC released by the Commission leaves no room for doubt that the OSC was based on the Hollingsworth Draft, even as to misstating the names of undersigned counsel and counsel's firm.

Section 554(d)(2) of the Administrative Procedure Act provides that "an employee or agent engaged in the performance of investigative or prosecuting functions for an agency in a case may not, in that or a factually related case, participate or advise in the decision, recommended decision, or agency review pursuant to section 557 of this title, except as a witness or counsel in public proceedings," 5 U.S.C. §554(d)(2). By his sending of a letter to

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<sup>4</sup> The Commission supplied the internal memorandum to Kay in response to a Freedom of Information Act request. On December 28, 1994, Kay requested that the Commission certify a copy of the document. However, to date, the Commission has not responded to Kay's request.

Kay pursuant to Section 308(b) of the Communications Act on January 31, 1994, *see*, OSC at para. 6, n. 5, Hollingsworth placed himself in the position of an investigator of Kay's activities. Accordingly, Hollingsworth should have been precluded from participating or advising in the Commission's decision in the instant case. However, Hollingsworth prepared the initial draft of the OSC which defined the issues to be decided.

As the editor of a publication participates in every story published by defining the terms of that which constitutes a publishable story, there is no more fundamental way in which a Commission employee can participate in the formation of a decision from the outset of the process than by defining the issues of that which is to be decided. By his participation in the definition of the issues to be decided in the instant proceeding, Hollingsworth violated Section 554(d)(2), irretrievably tainting the instant proceeding from the beginning. Because there is no way in which the Commission can cleanse this proceeding from the taint placed on it by the principal investigator's having participated in the decision by defining the issues to be decided, this matter should be dismissed at once, and with prejudice, at least as to the issues defined by the investigator, Hollingsworth.

Dismissal with prejudice will conduce to the ends of justice. The Private Radio Bureau dawdled for months between the time that it initially requested that Kay supply certain information to it and the time that the Commission issued the OSC. During that time, the Private Radio Bureau dismissed many of Kay's applications, rather than affording him the right to a hearing on them guaranteed by Section 309(e) of the Act, 47 U.S.C. §309(e). As shown

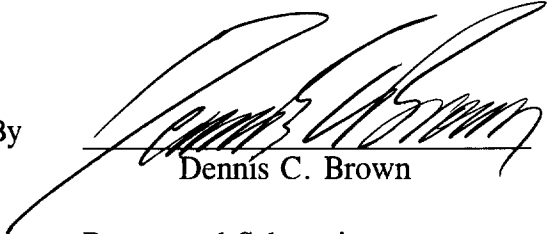
by Hollingsworth Memorandum attached as Exhibit I hereto, the real intent of the Commission in the instant matter was never to determine whether Kay had the requisite qualifications to be a Commission licensee. Rather, Hollingsworth's and the Bureau's intention in forwarding the OSC was to preserve, in some undescribed way, the Commission's power to obtain information under Section 308(b) of the Communications Act. The Commission has acted most unfairly by dragging Kay through months of travail up to the point of designating all of his licenses for hearing for an ulterior motive, only to have the Private Radio Bureau fail to appear when ordered to do so. As shown by the letter from Hollingsworth to undersigned counsel dated May 20, 1994, and attached as Exhibit II hereto, the purpose of Hollingsworth and Private Radio Bureau in subjecting Kay to a hearing has never been to determine whether he has the requisite qualifications to be a Commission licensee. Rather, the Private Radio Bureau's purpose has expressly been, by the terms of Hollingsworth's May, 1994, letter, to sanction Kay by subjecting him to the hearing process, itself. *See*, Exhibit II at page 3, second full paragraph. It is clear from the actions and the neglects of the Private Radio Bureau that it has no genuine interest in prosecuting a case of fact and law against Kay. To terminate the multitude of abuses which the Private Radio Bureau has imposed on Kay, culminating in its failure to enter a timely appearance, the Judge should terminate this matter at once, dismissing it with prejudice.

Conclusion

For all the foregoing reasons, Kay respectfully requests that the Judge terminate the instant matter, dismissing it with prejudice.

Respectfully submitted,  
JAMES A. KAY, JR.

By

A handwritten signature in black ink, appearing to read "Dennis C. Brown", is written over a horizontal line.

Dennis C. Brown

Brown and Schwaninger  
1835 K Street, N.W.  
Suite 650  
Washington, D.C. 20006  
202/223-8837

Dated: January 12, 1995

## **EXHIBIT I**



UNITED STATES GOVERNMENT

MEMORANDUM

DATE: September 15, 1994

REPLY TO

ATTN OF: W. Riley Hollingsworth *WRH*  
Deputy Chief, Licensing Division

SUBJECT: James A. Kay, Jr.  
Draft, Order to Show Cause

TO: Ralph A. Haller  
Chief, Private Radio Bureau

THRU: Gary L. Stanford *GLS*  
Chief, Licensing Division

After receiving complaints from several sources that James A. Kay, Jr. had not constructed some stations for which he holds licenses (including stations located on National Forest Service land) and that Kay falsely reports his loading, we sent Kay a § 308(b) letter requesting an inventory of his licenses, copies of Kay's forest service permits, and Kay's billing records. Kay requested and received three extensions of time, clarification of the information sought, confidentiality and some assurance that proprietary information would be kept confidential. Kay then refused to provide the information we sought stating through counsel that "there is no date...for which submission of the requested information would be convenient". Mass Media Hearing Division has indicated that they would put this case on for us. Whether they do it, or Common Carrier Enforcement or someone in PRB, it should be started very soon according to OGC. That office is handling Kay's FOIA litigation. With the present workload of the Licensing Division legal staff, it is imperative that we not put on the case, although of course my staff and the examiners would enthusiastically help out.

Our records show that Kay has more than one hundred and sixty licenses in the land mobile services concentrated in the L.A. market. He also does business and holds additional licenses under other names. His licenses include trunked and conventional SMR licenses as well as business radio service licenses. Almost all of these licenses allow Kay to provide for profit communication service.

The primary purpose of the attached order to show cause is to preserve our ability to require responses to § 308(b) letters. We feel that failing to follow through on our request for

information may jeopardize our ability to administer an effective compliance program.

We have confidence that discovery will reveal that not all of Kay's stations are constructed, and that he exaggerates his loading to avoid the consequences of our channel sharing and channel recovery provisions. We included in the draft order miscellaneous allegations including possible misuse of Commission forms. These are based on various reports received from licensees. OGC and Mass Media Hearing Division have worked with us on the Order to Show Cause and have approved it.

We have not included Appendix A which would list Kay's known licenses.

Draft  
14:59 9/15/94

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of

JAMES A. KAY, JR.

Order to Show Cause  
why more than one  
hundred sixty four Part 90  
licenses should not  
be revoked or cancelled.

Order to Show Cause  
why Kay should not be  
ordered to cease and  
desist from certain  
violations of Commission  
rules.

**ORDER TO SHOW CAUSE AND  
HEARING DESIGNATION ORDER**

**Adopted:**

**Released:**

By the Commission:

1. The Commission has before it for consideration more than one hundred sixty four land mobile licenses<sup>1</sup> authorized under Part 90 of the Commission's Rules. 47 C.F.R. § 90.1 et seq. The licensee, James A. Kay, Jr., has failed to respond to Commission requests for written statements of fact. In addition, we have reason to believe he has failed to comply with the Commission's Rules, and may not possess the character qualifications necessary to be a Commission licensee. For the reasons that follow, we will order Kay to show cause why his licenses should not be revoked or cancelled, and designate the matter for a hearing before an administrative law judge.

2. In response to complaints regarding the construction and operational status of a number of Kay's licensed facilities, on January 31, 1994, Commission staff requested additional information to determine whether Kay had committed rule violations by operating systems in the trunked mode that were licensed for conventional use and by not meeting the construction and placed-in-operation requirements of the Commission's Rules. 47 C.F.R. §§ 90.155, 90.631 and 90.633. This letter also requested information to enable the staff to determine if stations licensed to Kay have permanently discontinued operation in violation of our rules. 47 C.F.R. § 90.157. The letter also directed Kay to provide information detailing the loading of end users on Kay's base stations in order to assess Kay's compliance with our "forty mile" rule, which prohibits licensees from obtaining additional license grants within forty miles of an existing station until the existing station is loaded

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<sup>1</sup> See Appendix A.

to 70 mobile units per channel, and to apply our channel sharing and recovery provisions. 47 C.F.R. §§ 90.623, 90.627, 90.631 and 90.633.

3. We have received complaints that some of Kay's stations are not constructed. Because many of the stations are licensed to operate from mountain peaks managed by the U.S. Forest Service in the Los Angeles area, U.S. Forest Service permits are required to construct and operate on the peaks. In order to assess compliance with our construction and operation requirement, the staff requested that Kay identify the stations for which he holds FCC licenses as well as those he manages. The staff directed Kay to note those that are on U.S. Forest Service land.

4. Information available to the Commission also includes that James A. Kay, Jr. has done business under a number of assumed names. We believe these names include some or all of the following: Air Wave Communications, John C. Allen dba Buddy Sales, Buddy Corp., Buddy Sales, Buddys Sales, Buddy Corp. dba Buddy Sales, Buddy Corp. dba Southland Communications, Consolidated Financial Holdings, Hessman Security, Roy Jensen, James Kay, James A. Kay, Jr., Lucky's Two Way Radio, Luckys Two Way Radio, Luckys Two Way Radios, MetroComm, Multiple M Enterprises, Inc., Oat Trunking Group, Oat Trunking Group, Inc., Marc Sobel dba Airwave Communications, Southland Communications, Southland Communications, Inc., Steve Turelak, Triple M Enterprises, Inc., V&L Enterprises, and VSC Enterprises. The inquiry letter sent to Kay directed that he identify all station licenses he holds under all names under which he does business.

5. The letter also requested that Kay substantiate the loading of his stations by providing customer lists and telephone numbers. Such business records are the Commission's generally acceptable proof of loading. Kay was assured that proprietary information would be considered confidential.

6. Kay filed a response that provided none of the requested information. He simply referenced some dissimilar information provided to the Commission staff at other times. Kay failed to provide the requested information after numerous extensions of time, responding at one point that "there is no date...for which submission of the requested information would be convenient". Accordingly, we will designate this matter for hearing to determine Kay's fitness to remain a Commission licensee, in light of his conduct and his refusal to respond to the Commission inquiry.

7. We have also received complaints from various parties that James A. Kay, Jr. misused the Commission's processes. For example, licensees have complained that Kay has fraudulently induced them to sign blank Commission forms seeking modification of license. Kay allegedly then uses the form to cancel the licenses.

8. Accordingly, IT IS ORDERED that pursuant to Section 312(a) of the Communications Act of 1934, as amended, James A. Kay, Jr. is directed to show cause why his licenses should not be revoked or cancelled<sup>2</sup> at a hearing before an Administrative Law Judge, at a time and place to be designated in a subsequent Order, upon the following issues:

a) To determine whether James A. Kay, Jr. has abused the Commission's processes by failing to respond to a Commission inquiry;

b) To determine whether James A. Kay, Jr. has violated Section 1.17 of the Commission's Rules, 47 C.F.R. § 1.17, by failing to respond to a Commission inquiry;

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<sup>2</sup> Several of the rule violations discussed above are subject to an automatic cancellation condition: if the licensee does not meet his or her construction deadline, or if the licensee permanently discontinues operation, the license cancels automatically. See e.g., 47 C.F.R. §§ 90.157, 90.631 and 90.633.

c) To determine whether James A. Kay, Jr. has exceeded his license authority by operating systems in the trunked mode that were authorized for conventional use and to determine if he has violated any of the following: Sections 90.155, 90.157, 90.623, 90.627, 90.631, and 90.633 of the Commission's Rules, 47 C.F.R. §§ 90.155, 90.157, 90.623, 90.627, 90.631, and 90.633;

d) To determine if any of James A. Kay, Jr.'s licenses have automatically cancelled as a result of violations listed in subparagraph (c);

e) To determine whether James A. Kay, Jr. has misused the Commission's processes in order to defraud other licensees;

f) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether James A. Kay, Jr. is qualified to remain a Commission licensee; and

g) To determine whether Kay should be ordered, pursuant to Section 312(b) of the Communications Act of 1934, as amended, to cease and desist from violation of Commission Rules 1.17, 90.155, 90.157, 90.623, 90.627, 90.631, 90.633, 47 C.F.R. §§ 1.17, 90.155, 90.157, 90.623, 90.627, 90.631, 90.633.

9. IT IS FURTHER ORDERED that the above issues be consolidated for hearing pursuant to Section 1.227(a)(2) of the Commission's Rules.

10. IT IS FURTHER ORDERED that the Chief, Private Radio Bureau SHALL BE a party to the proceeding.

11. IT IS FURTHER ORDERED, that to avail themselves of the opportunity to be heard, the parties, pursuant to Section 1.91(c) of the Commission's rules, in person or by attorney, shall file with the Commission within thirty (30) days of the receipt of the Order to Show Cause and Hearing Designation Order a written appearance stating that they will appear at the hearing and present evidence on the matters specified in the Order. If a party fails to file an appearance within the time specified, the right of that party to a hearing shall be deemed to have been waived. See Section 1.92(a) of the Commission's rules. Where a hearing is waived, a written statement in mitigation or justification may be submitted within thirty (30) days of the receipt of the Order to Show Cause and Hearing Designation Order. See Section 1.92(a) of the Commission's rules. In the event the right to a hearing is waived by all the parties to this proceeding, the presiding officer, or the Chief Administrative Law Judge if no presiding officer has been designated, will terminate the hearing proceeding and certify the case to the Commission in the regular course of business and an appropriate order will be entered. See Section 1.92(c) of the Commission's rules.

12. IT IS FURTHER ORDERED that the burden of proceeding with the introduction of evidence and the burden of proof shall be on the Private Radio Bureau.

13. IT IS FURTHER ORDERED that the Secretary send a copy of this order via certified mail-return receipt requested to Dennis K. Brown, Esquire, Brown and Schwaninger, P.C., 1835 K Street N.W., Suite 650, Washington, D.C. 20006, and have this order or a summary thereof published in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton  
Acting Secretary

## **EXHIBIT II**

# Federal Communications Commission

1270 Fairfield Road  
Gettysburg, PA 17325-7245

May 20, 1994

**VIA REGULAR AND CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Dennis C. Brown, Esquire  
1835 K Street, N.W.  
Suite 650  
Washington, D.C. 20006

Re: Compliance File No. 94G001; James Kay

Dear Mr. Brown:

On April 8, 1994, you submitted a letter on behalf of your client, James A. Kay, Jr., in reply to a Commission inquiry dated January 31, 1994, requesting information pursuant to § 308(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 308(b).

Kay's letter is inadequate, evasive, and contrived to avoid full and candid disclosure to the Commission. Kay's letter represented a studied effort to avoid producing any information. His failure to disclose pertinent information to the Commission has raised a substantial question about his qualifications to be a Commission licensee. The response is elusive and apparently designed to conceal his operating practices. Kay failed to adequately answer any single question included in our inquiry. Kay is directed to file a fully responsive submission within fourteen (14) days of the date of this letter.

With respect to Kay's request that information provided to the Commission in response to our inquiry be withheld from public inspection, we will not make those materials which are specifically listed under the provisions of Rule 0.457, 47 C.F.R. § 0.457, routinely available for inspection to the public. Therefore, materials which include any information containing trade secrets or commercial, financial or technical data which would customarily be guarded from competitors, will not be made routinely available to the public. Under the provisions of Commission Rules 0.457(d)(2)(i) and 0.461, 47 C.F.R. §§ 0.457(d)(2)(i) and 0.461, a persuasive showing as to the reasons for inspection will be required for requests submitted by the public pursuant to Rule 0.461, which seek information not routinely made available for public inspection under Rule 0.457. You are reminded of your obligation to physically separate those materials to which the request for nondisclosure applies from any materials to which the request does not apply. If a physical separation is not feasible,

the portion of the materials to which the request for nondisclosure applies must be identified. See, Rule 0.459(a).

Kay's claim that the Commission recently disclosed financial information in a finder's preference matter, which target Joseph Hiram requested be kept confidential, is frivolous. In response to a finder's preference request filed by your office on behalf of Kay, Hiram filed three letters stamped "confidential" as part of his Opposition. Hiram later advised the Commission that the three letters could be released to your law office. In a conversation with a member of my staff on March 17, 1994, attorney Katherine Kaercher of your office was advised that the three letters were being released with Hiram's permission. The letters were sent via telefax to your office that same day, with a note that Kay had an additional ten day period in which to comment on the letters. In light of your firm's knowledge that Hiram's request for confidentiality had been withdrawn, your claim on behalf of Kay that the Commission wrongfully released confidential information is deceptive and highly improper.

We clearly stated in our letter that we have received complaints alleging that numerous facilities are licensed to Kay on U.S. Forest Service lands but do not have the requisite permits for such use. We went on to explain that without the permits, there is a presumption that those facilities were not constructed and made operational as required by our Rules. Whether or not a station is located on U.S. Forest Service lands is therefore relevant to the stated purpose of the Commission's inquiry. The Commission has also received complaints that Kay's actual loading is inconsistent with the loading that he has reported to the Commission and to the U.S. Forest Service.

Kay should be advised that under the provisions of § 308(b) of the Act, id., the Commission has authority from Congress to require from an applicant or licensee "such other information as it (the Commission) may require," at any time after the filing of an application or during the term of any license. The Commission's resources are to benefit the entire public, not solely to benefit only one licensee.

When asked to name the "type of facility" for each call sign, Kay argued that this request was "not sufficiently specific" to allow him to be sure what the Commission requested. However, he suggested that the requested information is already within the Commission's records.

If Kay did not understand how to respond to the question calling for "type of facility", he had ample opportunity to contact the Commission during the initial 60 day time period provided to respond. Furthermore, on February 17, 1994, your office submitted



a request with the Commission, on Kay's behalf, seeking a tolling of the 60 day period of time in which Kay had to respond to our inquiry, until such time as the Commission replied to the statements in the February 17, 1994 request. In reply, Kay was granted an additional 14 days to supply the information we requested in our January 31, 1994 inquiry letter. If Kay needed clarification of one of our questions, it was his duty to seek it from us prior to the April 14, 1994 revised deadline. He had ample time to seek clarification, but elected not to do so. However, Kay is advised that the term "type of facility", as requested under heading number 2 of our January 31, 1994 inquiry letter, relates to the radio service in which the facility was licensed (i.e., YX, GX, YB, GB, etc.).

As part of our inquiry, the Commission requested that Kay provide a listing of the total number of units operated on each station, with a demonstration of such use substantiated by business records. Kay refused to respond, stating that the question was not sufficiently specific for him to supply the requested information, since "at any given instant of time, Mr. Kay may not know the number of mobile units operated on each of his stations." Kay later states that he "is currently spending one full day per week in the activity of collecting his charges from delinquent customers." Kay's refusal explanation is therefore contradictory, since he must have knowledge of his customer base to be aware of account delinquencies. His refusal to respond is also inexcusable since he was afforded an ample opportunity to clarify the window of time during which the information was requested. Kay is advised, however, that the Commission requests a listing of the total number of units operated on each station for all facilities owned or operated by Kay, or by any companies under which he does business, as of January 31, 1994, (the date of our initial inquiry). Kay is reminded that such demonstration of use during this period must be substantiated by business records.

Failure to provide the requested information constitutes a violation of the Commission's Rules and will subject Kay to sanctions, including a hearing before an Administrative Law Judge to determine whether Kay's licenses should be revoked.

We note that on May 11 and 13, 1994 Kay was notified that we would need an answer to our inquiry in order to determine what action to take on application numbers 415060, 415243, 415255, 628816, 632210 and 415274. We asked for responses by May 25 and May 27, respectively. Those response dates are extended to June 3, 1994 to conform with the instant letter.

The Communications Act requires that a response to a § 308(b) inquiry be signed by the applicant and/or licensee. Please direct Kay's signed response to my attention at the letterhead address.

Sincerely,

A handwritten signature in black ink, appearing to read "W. Riley Hollingsworth". The signature is fluid and cursive, with the first name "W." and last name "Hollingsworth" clearly distinguishable.

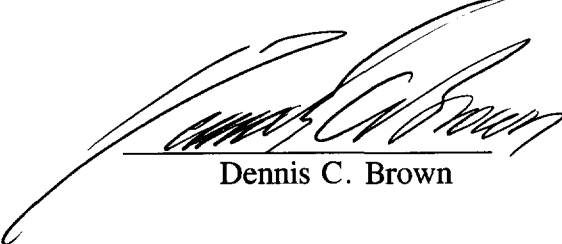
W. Riley Hollingsworth  
Deputy Chief, Licensing Division

CERTIFICATE OF SERVICE

I hereby certify that on this twelfth day of January, 1995, I served a copy of the foregoing Motion to Dismiss on each of the following persons by placing a copy in the United States Mail, first-class postage prepaid:

Mr. Ralph A. Haller  
Federal Communications Commission  
Room 5002, Mail Stop 1700  
2025 M Street, N.W.  
Washington, D.C. 20554

Regina M. Keeney  
Federal Communications Commission  
Room 5002, Mail Stop 1700  
2025 M Street, N.W.  
Washington, D.C. 20554

  
Dennis C. Brown